Cooperation between the CPT and the authorities of the Netherlands

1. *The CPT recommends that, when negotiating future readmission agreements and/or implementation protocols, an explicit reference should be made to the possibility for national or international monitoring bodies (such as the CPT) to observe removal operations to the country of destination, including the handover procedure to the local immigration authorities. Specific arrangements should be made, on an ad hoc basis, as regards readmission agreements already in force; the same principles should apply vis-à-vis FRONTEX JROs (paragraph 6).*

   Readmission agreements are generally concluded between the European Union and third countries. The presence of international monitoring bodies is not provided for in the standard text of such agreements. Implementation protocols for EU readmission agreements and for bilateral readmission agreements are negotiated at Benelux level. Incorporating an explicit reference to international monitoring bodies in the text of readmission agreements and implementation protocols requires the agreement of all parties involved. This can hinder the conclusion of such agreements and protocols.

   However, in cases where it is leading negotiations, the Netherlands is prepared to include a reference to the desire for monitoring to be carried out by international monitoring bodies.

Preliminary remarks

2. *The CPT considers that a State's fundamental obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment (i.e. the "non refoulement principle") must be kept in mind in the context of the removal of foreign nationals by air ("return flights") (paragraph 7).*

   The Government fully supports this remark. If an alien believes that returning would place him/her at risk of treatment contrary to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), then he/she can submit an application for asylum to this effect. As part of the asylum procedure, an assessment is made as to whether returning an alien would put him/her at risk of treatment contrary to article 3 of the ECHR. Under the Dutch procedures, asylum applications are considered with due care and can be assessed by an independent court. If it is determined that returning an alien would not put him/her at risk of treatment contrary to article 3 of the ECHR, then return procedures begin. The Netherlands' return policy is implemented with due care and includes the necessary safeguards.

Preparation for removal

3. *The CPT recommends that access to legal advice and avenues of legal recourse to be maintained until the moment of departure (i.e. until the moment the doors of the plane are closed) (paragraph 15).*

   The current 'last minute' application procedure offers sufficient safeguards for access to legal assistance and legal remedies until the moment of departure. The alien's legal representative is given prior written notice in due time of when removal will occur to allow enough time to utilise any available legal remedies. The alien is also informed of this. Any request by the alien to contact his/her legal representative on the day of departure will, in principle, always be granted by staff on the ground (Repatriation and Departure Service (DT&V), Immigration and Naturalisation Service (IND), Royal Military and Border Police (KMAR)). In addition, an IND duty officer, who is familiar with the case at hand, stands on the stairs to the aircraft until the actual moment of departure to deal with any possible 'last minute' applications for admission.

4. *The CPT recommends that steps should be taken to ensure that a "last call procedure" be put in place as regards removal operations by air organised by the authorities of the Netherlands (paragraph 16).*

   As noted in the response to the previous recommendation, aliens and their legal representatives are informed in due time of the planned flight date so that, if desired, they can make use of any available legal remedies. At least 24 hours before actual removal, it is standard practice for DT&V to make a final removal check; it asks the IND whether the alien's residence status has changed and whether he/she is still required to leave the Netherlands. DT&V does not take any action on actual removal prior to being notified by the IND, and shortly before removal the IND verifies whether the alien can still be removed. The Government will therefore not act upon this recommendation.

5. *The CPT recommends that steps should be taken in future to ensure the presence of medical/nursing staff throughout the whole journey (i.e. from the point of collection to the point of final destination (paragraph 20).*

   As the CPT itself points out, medical/nursing staff are present on official flights. The recommendation of ensuring the presence of medical/nursing staff from the time of departure from the detention location will be acted upon. The course of action obviously depends on the individual circumstances of the patient/alien, however. Such action will not be necessary for every patient, for instance when medical assistance has already been arranged on account of the air travel itself or the length of the journey.

6. *The CPT recommends that in future, in exceptional circumstances, when criteria justifying the use of a diaper are met the diaper to be placed in a correct manner (i.e. under the trousers) (paragraph 21).*

The Government pledges that staff will be made aware of this recommendation, which the Government supports in principle.

7. *The CPT recommends that the use of physical control and restraint techniques by escorts during ground transfer(s) should be justified in each case by an individual risk assessment (paragraph 22).*

   An individual risk assessment is undertaken for each alien, based on the M118 form submitted by the chief of police. This form gives KMAR advance notification of the circumstances, including information on the alien's conduct and any medical issues, which could affect the safety of the officials charged with overseeing the flight. During preparations, the escort commander makes an assessment of the situation on the basis of the information provided in this form. During removal, the escort commander continually assesses how an alien should be approached, spoken to and treated, taking account of the applicable procedures. This working method will be maintained.

8. *The CPT recommends that a medical examination of the person to be removed be systematically carried out whenever the prolonged use of force or means of restraint during the removal is expected or highly likely (paragraph 27).*

   Prior to a flight, it is not always possible to assess which aliens will exhibit systematic and prolonged resistance. In practice, only a small number of aliens exhibit resistance immediately prior to or during an official flight. Such conduct is generally not sustained, as the alien's resistance normally decreases once the flight commences. In addition, aliens are under medical supervision in detention centres. Should there be indications that removal would be medically irresponsible due to anticipated resistance, this is reported, and a decision can be made on this basis as to whether extra measures are required. Such measures may include a fit-to-fly assessment or the presence of medical/nursing staff on board.

9. *The CPT recommends that all persons returning to detention after an aborted removal operation to undergo a medical examination upon admission to the detention centre (paragraph 27).*

   When the removal of an alien is aborted and the alien is returned to a different detention centre than the one in which he/she was previously detained, an assessment will be made by medical staff upon his/her return to the centre. If he/she is returned to the detention centre where he/she was housed prior to the aborted removal, then updated information is provided upon return.

10. *The CPT comments that preparing the person to be removed from the Netherlands well in advance for his/her removal has proved in the long-term to be the most humane and efficient approach (see also paragraph 23) (paragraphs 17 and 23).*

    Aliens are kept informed during return procedures and are notified of their removal in due time. During the first removal interview, they receive an information leaflet from DT&V. Should it become possible to remove the alien from the Netherlands, then the destination, date and time of removal are discussed with him/her, if these details are

already known. Any medical issues which could play a role during removal are discussed at this point also. The alien's legal representative is informed in writing of the flight details as soon as these are known. The alien is also informed of the flight details in due time.

11. *The CPT recommends that efforts should be made by KMAR – through appropriate training – to develop further ground staff communication skills and facilitate thereby the handling of difficult detainees (paragraph 18).*

    All ground staff have received specialised training, focusing on the correct use of means of restraint and on working as part of a team. Staff are trained on how to deal with rising levels of resistance, although it must be noted that simulated resistance does not always accurately correspond to actual resistance by an alien during removal. In order to avoid excesses, staff practise using means of restraint during training and a sports instructor is present and ready to intervene if required. In response to the recommendation, a programme of best practice exchange will take place with the Transport and Support Services Department (DV&O).

12. *The CPT considers that the number of KMAR staff involved in the "standard" pick-up procedure applied to four detainees to be removed on 17 October 2013 appeared to be somewhat excessive (paragraph 19).*

    During initial ground staff training, team procedures are practised, with each staff member being allocated a specific task. The effectiveness of this arrangement stems from its nature as a team process and from the manner of its implementation. When waking and collecting aliens from their cells, each team member carries out a specific role. The team can be scaled up if the alien's conduct so requires. Initially, only two ground staff are actively involved, while other members of staff stand and observe from a distance, only intervening if this becomes necessary. The Government will maintain the current working method.

13. *The CPT welcomes the advance procedure (personal belongings being collected the night before departure and put in transparent bags) that made it possible to considerably shorten the waiting time (by a few hours) on the day of departure (paragraph 19).*

    The Government has taken note of this (positive) observation.

14. *The CPT observes that far too many staff (including the FRONTEX TV crew) were present in the very small room while the replacement of the means of restraint was taking place (paragraph 21).*

    As regards the number of KMAR staff present, the Government refers to the answer given in the response to point 12. As regards the presence of various monitoring bodies (Repatriation Supervisory Committee (CITT), the Security and Justice Inspectorate (IV&J), the CPT and the FRONTEX TV crew), the Government notes that this was a highly exceptional situation and one which ought not to be repeated.

The Government also wishes to note that it is not up to the Government to refuse monitoring bodies access.

15. *The CPT observes that the long and tiring procedure described in paragraph 21 would have been unnecessary if the DV&O special escort team had been equipped with a "French" body-belt from the start (paragraph 21).*

DV&O has stated its willingness to work with the 'French' body-belt in future, with the result that means of restraint will not need to be changed, thereby avoiding unnecessarily long procedures. When the 'French' body-belt is used, humane treatment of the alien remains paramount. DV&O staff will be trained in the use of this device. A knowledge exchange programme between KMAR and DV&O has already been announced to this end. Training may form a part of this programme.

16. *The CPT observes that the extended period of time (from 6.10 a.m. to 3.45 p.m)., during which a detainee remained body-cuffed appears excessive for someone who was under constant and close surveillance by three experienced escorts throughout the whole journey to Lagos (paragraphs 24 and 42).*

Based on the alien's conduct during the procedure leading up to the flight and on board the aircraft, the escort commander made the decision not to remove the body-cuff for the duration of the flight, despite escorts being seated next to the alien. The risk that the alien would offer physical resistance if the body-cuff were to be removed was too great, in the escort commander's view. This is not normal procedure, but in this case it was carried out with a view to maintaining safety on board the aircraft. The escort commander makes the decision on whether to remove means of restraint based on the alien's conduct. In general, means of restraint are not used for longer than necessary. In this case, the escort commander deemed it necessary to guarantee the safety of the alien, escorts and other occupants of the aircraft.

17. *The CPT recommends that every person being forcibly removed by air be given the opportunity to undergo a medical examination prior (i.e. a few days before) his/her departure (paragraph 27).*

A medical examination at the alien's request prior to departure is not standard procedure. A fit-to-fly assessment takes places on the basis of guidelines from the International Air Transport Association (IATA). The IATA's 'medical manual' focuses on whether passengers in general are fit to fly. For the passenger's own safety it is important that he/she is found to be sufficiently healthy to allow air travel and that the airline is informed of any conditions that need to be fulfilled to allow him/her to fly. Naturally, the same principles apply to aliens.

A fit-to-fly assessment is not carried out in every removal case, however. All persons are fit to fly in principle, unless there are medical reasons to the contrary. It is therefore the alien's own responsibility to state whether there are any medical reasons preventing him/her from flying. A fit-to-fly assessment is always carried out if the need to do so is evident from advice given by the Medical Advisers' Office (BMA) or the medical service. When there is doubt as to whether a fit-to-fly assessment

must be requested, the medical service is contacted for advice. It can also be asked for advice if medical complaints are reported during a removal interview, if it appears from the M118 form that there may be medical issues, or if the alien's authorised representative argues that there are medical obstacles.

18. *The CPT considers that it would have been highly advisable for a Rotterdam Detention Centre health-care professional to be present on the morning of departure, to ensure the fast, smooth and adequate transfer of medical information to the medical team flying to Lagos (as well as to offer the possibility of responding to any last-minute questions they might wish to raise) (paragraph 29).*

The Government will act on this recommendation. Under the working method which has now been adopted, a nurse from the medical service must be present on the morning of departure of all official flights.

19. *The CPT would like to receive detailed information on the comments of the authorities of the Netherlands on the remarks concerning the possibility for the doctor to appropriately assess the medical condition of the person to be removed without having access to his/her medical file, and regarding the possibility for the detainee to establish a proper doctor-patient relationship, based on mutual trust, if the medical doctor is only identifiable with a code number (paragraph 27).*

Any doctor who carries out a fit-to-fly assessment is an independent physician who must make their own judgement of the situation at that moment and of whether an alien is fit enough to fly. If an alien gives permission for the doctor in question to view his/her medical file then this file can be used during the assessment. Otherwise the doctor must make do with the information available to him/her. Whether or not the doctor has access to the alien's medical file is therefore the choice and responsibility of the alien. It is explained that it is in his/her best interests that an assessment be made of his/her fitness to fly. Any consequences arising from a refusal to allow the assessing doctor to view the medical file are at the alien's own risk.

Doctors carrying out fit-to-fly assessments are identified by a code on the fit-to-fly form. These doctors are independent physicians who carry out fit-to-fly assessments alongside their regular medical duties. The reason that a code, rather than a name, is given on the form is due to an incident where a doctor's name appeared on the internet. Doctors do, however, introduce themselves to aliens, stating their name and explaining why the assessment is taking place. The code can always be checked to see which doctor carried out the assessment. In general, aliens only meet a fit-to-fly doctor once, just before removal.

20. *The CPT would like to receive detailed information on the procedures followed during FRONTEX flights as regards the sharing of medical information relating to detainees removed by other PMS with the "Organising State" medical team (paragraph 29).*

See the response to point 22.

Execution of the removal

21. *The CPT is of the opinion that the determined and skilful intervention of the Dutch back-up team leader during the incident on the first flight segment prevented any further escalation of the problem and helped to resolve it in the most appropriate manner (paragraph 32).*

    The Government has noted this positive feedback and has informed the official concerned of the CPT's findings.

22. *The CPT is of the opinion that the time is now ripe for more in-depth discussions among FRONTEX State Parties on the subject of promoting more precise common rules on the use of means of restraint (paragraph 32).*

    FRONTEX has drawn up a Code of Conduct (attached) which is used during FRONTEX joint return operations. The procedure for sharing medical information is described in this Code of Conduct. Led by FRONTEX, doctors are currently working on a presentation on the transfer of medical details which can be given during escort leader training. A fit-to-fly template is also being prepared. These resources are expected to be completed in autumn 2014. In addition, the use of means of restraint is looked at during escort leader training. For the record, it must also be noted that no practical training is offered on using means of restraint. It is the responsibility of member states to train their own escorts in this respect. As the CPT is already aware, every state has its own techniques and own types of means of restraint. During escort leader training, some attention is paid to legal issues, the periods for which means of restraint can be used, which means of restraint are permitted and who has the authority to use them. Finally, the Government pledges to raise the recommendation in question within FRONTEX when the opportunity arises.

23. *The CPT invites the authorities to reconsider their policy on keeping the door of the toilet systematically slightly open for security reasons when a detainee is complying with the needs of nature; decisions in relation to these matters should be based on an individual risk assessment (paragraph 33).*

    See the response to point 7. An individual risk assessment is undertaken for each alien, based on reports of the alien's medical and conduct issues.

24. *The CPT welcomes the approach followed by the two health-care professionals, which reflects the Committee position that the use of chemical restraint during removal operations is unethical and strictly prohibited by law (paragraph 36).*

    The Government takes note of this positive finding from the CPT.

25. *In the CPT's opinion, health-care staff accompanying removal operations by charter flight should be systematically provided with a fully equipped emergency case (i.e. including a variety of medical equipment, as well as the medication most commonly used in emergency situations) (paragraph 37).*

It has been agreed with the service that supplies medical escorts for official flights that a fully-equipped emergency case will be carried on every official flight.

Handover to the Nigerian authorities and debriefing-related issues

26. *The CPT recommends tat both preliminary (i.e. on board) and in-depth debriefing sessions be systematically organised after removal operations, both at team and senior levels, in the light of the remarks in paragraph 40 (paragraph 40).*

Briefings take place at various moments during the removal operations process. Prior to the departure of a joint return operation (JRO) for a final destination, the escort commander from the organising state organises a briefing with all escort commanders from participating states and the FRONTEX observer. Following handover, a debriefing occurs in the aircraft involving the escort commander from the organising state, all the escort commanders from participating states and the FRONTEX observer. During the return flight, the escort commanders fill out debriefing forms. Upon arrival in the Netherlands, an immediate debriefing involving the Dutch escorts is held following disembarkation of the aircraft. DT&V is subsequently responsible for the creation of a Final Return Operation Report (FROR). Shortly after the completion of an operation, DT&V also issues a written request for feedback to all the partners involved. An evaluation meeting is organised by DT&V if this is felt to be necessary. The JRO is then evaluated at the next FRONTEX JRO Evaluation and Planning Meeting.

Other issues related to the CPT mandate

<u>Use of force</u>

27. *The CPT recommends that all KMAR escort staff wear a visible identification tag that would make them easily identifiable (either by their name or an identification number) (paragraph 43).*

Escorts do not currently wear any visible identification that would make individuals easily identifiable. Prior to the flight, KMAR staff members show their identification to the deportee and FRONTEX staff members. There is also a seating plan which establishes which escorts are accompanying a given alien and where they are seated within the aircraft. This means that it is always possible to establish which escort has been in contact with a given alien after the fact. Furthermore, when accompanying aliens, KMAR makes use of an exceptional circumstances form, in which the names of the escorts and any exceptional circumstances are recorded. This means that observers can always find out the names of given escorts. As an alternative to visible identification, jackets clearly stating the role of the KMAR staff member (escort commander, escort or back up) are now in use. On the basis of the foregoing, the Government believes it has acted sufficiently on the CPT's recommendation.

Role of national monitoring bodies

28. *The CPT recommends that the precepts detailed in paragraph 48 regarding the monitoring of a person to be removed to be followed by the IV&J monitors when performing their new duties (paragraph 48).*

    IV&J recognises the importance of this recommendation from the CPT. Like the CPT, IV&J views establishing a good relationship between the escort team and the deportee as essential to ensuring that removal procedures run smoothly. The monitoring of removal procedures by IV&J therefore includes witnessing the (first) meeting between these parties. In the Netherlands, this does not – in contrast to what is perhaps suggested in the text of the CPT report – usually coincide with the moment that the deportee is collected from a detention centre or similar institution on the day of removal. It takes place at the Schiphol departure centre, to which DV&O brings the deportee three hours prior to his/her removal. IV&J monitors are present as witnesses from the moment a deportee arrives at the departure centre. In the near future, monitoring of how immigration policy is implemented will be further extended and the processes preceding actual removal will also be subject to monitoring by IV&J.

29. *The CPT would like to receive information on the protocol being drawn up by DT&V regulating the transfer of medical information the health-care staff of the detention centers and the contracted external medical services (paragraph 45).*

    As a result of doctor-patient confidentiality, DT&V does not have access to the medical files of aliens. It can however play a facilitating role by passing details provided by the medical service where the alien is residing on to the medical escort who is present on the flight. This medical escort can then contact the medical service.

30. *The CPT would like to receive detailed information on the mandate, the powers and the means assigned to the IV&J in order to fulfil the new monitoring mission of removal operations by air (paragraph 47).*

    The Return of Aliens (Monitoring) Order of 13 December 2013 (Government Gazette, 35638, 23 December 2013, see attached) outlines the monitoring mandate and powers. The main points of this ministerial order are as follows. IV&J is the designated monitor. The order explicitly states that IV&J receives no instructions for carrying out this task from the Minister of Security and Justice or others concerning the methods to be used, IV&J's appraisal and its subsequent report. Furthermore, provisions on the following are included: the report (i.e. who to report to and the availability of the report); the granting of powers (such as physical access and the obligation to cooperate); and the notification of the relevant institutions about planned monitoring activities. Monitoring is now carried out by four observers engaged by IV&J. These experienced monitors previously carried out similar duties for IV&J's predecessor, CITT. This pool is currently being further supplemented by a number of inspectors from IV&J itself. All those charged with monitoring have the necessary resources to carry out their duties effectively, such as a monitoring framework,

monitoring forms, passes for Schiphol Airport, diplomatic passports and clothing which renders them identifiable.

Staff related issues

31. *The CPT observes that regular team debriefings (see paragraph 40) also play a very important role in the context of the prevention of professional exhaustion syndrome and the risks related to routine, as well as the provision, on request, of specialised psychological support for staff (paragraph 50).*

Escorts are currently debriefed following every flight. This includes a complete run-through of the flight and of any exceptional circumstances in relation to the deportee. If possible, debriefing occurs while still on board the aircraft. Escorts and the back-up team are briefed separately, for practical reasons. Current practice is that if debriefing takes place on board, no further debriefing takes place upon arrival in the Netherlands. As well as a debriefing by the organising state, FRONTEX observers are always on board and escorts fill out an evaluation form during the flight for the FRONTEX Final Report. FRONTEX discusses the flight with the organising state. The practicalities of arranging for an additional debriefing upon arrival in the Netherlands are currently being examined.

Complaint procedures

32. *The CPT would like to receive detailed information on the complaints made in 2013 (substance, action taken, etc.) regarding misbehaviour of KMAR escort staff during repatriation operations (paragraph 51).*

2013	**1st quarter**	**2nd quarter**	**3rd quarter**	**4th quarter**	**Total**
Number of contacts with aliens within the Alien Affairs Brigade (BVZ)	4,116	3,979	3,687	4,365	**16,147**
Number of instances of use of force reported within BVZ	**178**	**135**	**161**	**112**	**586**
Number of instances of use of assistive device(s)	59	64	60	37	**220**
Number of instances of use of means of restraint	170	175	108	98	**551**
Number of instances of use of physical force	**38**	**31**	**31**	**12**	**112**

% of contacts with aliens in which physical force was used	0.9%	0.8%	0.8%	0.3%	**0.7%**
Total number of complaints	**2**	**3**	**2**	**3**	**10**
Number of complaints pertaining to physical force	2	2	2	1	**7**
Number of parts of which complaints were comprised	**2**	**3**	**3**	**8**	**16**
Number of parts of complaints declared well founded	0	0	0	1	**1**
Number of parts of complaints declared unfounded	1	3	0	7	**11**
Number of parts of complaints not ruled on	1	0	3	0	**4**
% of contacts with aliens within BVZ in relation to which complaints were registered	0.05%	0.08%	0.05%	0.07%	**0.06%**
% of instances of use of force reported within BVZ in relation to which complaints were registered	1.1%	2.2%	1.2%	2.7%	**1.7%**
% of total number of complaints relating to use of force	5.3%	6.5%	6.5%	8.3%	**6.3%**
% of total number of complaints relating to use of physical force	100.0%	66.7%	100.0%	33.3%	**70.0%**
% of parts of complaints declared well founded	0.0%	0.0%	0.0%	12.5%	**6.3%**
% of parts of complaints declared unfounded	0.0%	0.0%	0.0%	0.0%	**0.0%**
% of parts of complaints not ruled on	50.0%	0.0%	100.0%	0.0%	**25.0%**

33. *Is a similar complaint system in place concerning DT&V and DV&O activities in the context of removal operations (paragraph 51).*

There is currently a gap in the complaints system, which is being addressed in the Bill amending the Custodial Institutions Act, the

Hospital Orders Framework Act, the Young Offender Institutions Framework Act and other legislation in connection with transport, the medical right of complaint and other subjects (Parliamentary Papers, House of Representatives, 2013-2014, 33 844). Once the amendments have been implemented, aliens will be able to submit complaints about (a) body and clothing searches, (b) the use of force and (c) the use of means of restraint.

DT&V operates a complaints procedure based on the General Administrative Law Act (AWB). The Government provides a summary of written complaints submitted to DT&V 2013 below.

	Number in 2013
Written complaints (total)	25
Nature of the complaint:	
1. Concerning processing period *(complaints relating to the time taken to process permit applications etc.)*	7
2. Concerning provision of information *(complaints relating to the provision of information)*	2
3. Concerning the conduct of a staff member	6
4. Concerning other issues	10
Manner of disposal in 2013:	**Number in 2013**
- complaint will not be processed *(merits of the complaint not to be assessed)*	1
- complaint unfounded *(complaints assessed as – manifestly – unfounded)*	7
- complaint well founded *(complaints assessed as – manifestly – well founded)*	4
- complaint partially well founded/unfounded *(some parts of the complaint assessed as well founded, others as unfounded)*	3
- other manner of complaint disposal/settled amicably *(this relates to a settlement, when a complaint is informally disposed or withdrawn, see article 6 of the model complaints procedure)*	3
- complaint pending	7